

REQUEST FOR QUALIFICATIONS



UTAH DEPARTMENT OF TRANSPORTATION

I-15 CORE

Project No. MP-I15-6(178)245

GENERAL INSTRUCTIONS

April 16, 2009

TABLE OF CONTENTS

1.0	INTRODUCTION AND GENERAL INFORMATION	1
1.1	ABBREVIATIONS AND DEFINITIONS	1
1.1.1	Abbreviations.....	1
1.1.2	Definitions.....	2
1.2	PROJECT GOALS	4
1.3	ROLE OF THE DEPARTMENT	5
1.4	PROJECT DESCRIPTION, DESIGN-BUILDER RESPONSIBILITIES, AND PROJECT STATUS.....	5
1.5	PROJECT SCHEDULE	5
1.6	CONTRACT TYPE	5
1.7	GOVERNING LAW	5
1.8	QUALITY ASSURANCE/QUALITY CONTROL	5
1.9	INSURANCE, LICENSING, AND PERMITS	6
1.10	RULES OF CONTACT	6
1.11	PROPOSER QUESTIONS	7
1.12	RFQ ADDENDA	7
1.13	NOTIFICATION OF FIRMS ON THE SHORT-LIST	7
1.14	COSTS	7
1.15	ORGANIZATIONAL CONFLICTS; INELIGIBLE FIRMS.....	7
1.16	ORGANIZATIONAL AND CONFIDENTIALITY REQUIREMENTS	9
1.17	PROPOSAL STIPEND	9
2.0	PROCUREMENT PROCESS.....	10
2.1	OVERALL PROCUREMENT PROCESS	10
2.1.1	RFQ.....	10
2.1.2	RFP	10
2.2	PROCUREMENT SCHEDULE	11
3.0	EVALUATION PROCESS FOR THE SOQ.....	12
3.1	EVALUATION OBJECTIVES	12
3.2	REVIEW AND EVALUATION OF THE SOQ	12
3.3	EVALUATION FACTORS FOR THE RFQ/SOQ	12
3.3.1	Pass/Fail Evaluation Factors.....	12
3.3.2	Technical Evaluation Factors	12
3.4	REQUESTS FOR CLARIFICATION	13

I-15 CORE

Project No. MP-I15-6(178)245

3.5	DETERMINATION OF THE SHORT-LIST	14
3.6	CHALLENGE	14
4.0	SOQ SUBMITTAL REQUIREMENTS.....	14
4.1	DATE AND TIME OF RECEIPT	14
4.2	SUBMITTAL ADDRESS	14
4.3	SOQ REQUIREMENTS.....	15
4.4	CONTENT OF SOQ	15
4.4.1	Cover Letter.....	15
4.4.2	Evaluation Objectives and Submittal Requirements	15
4.4.2.1	Legal.....	16
4.4.2.2	Financial	17
4.4.2.3	Organization and Key Managers	18
4.4.2.4	Experience of the Firms.....	20
4.4.2.5	Past Performance.....	21
5.0	PROTESTS	23
5.1	WRITTEN PROTESTS ONLY	23
5.2	PROTEST CONTENTS	24
5.3	PROTEST PRIOR TO SOQ DUE DATE	24
5.4	PROTEST PRIOR TO ANNOUNCING THE SHORT-LIST	25
5.5	PROTEST REGARDING SHORT-LIST DECISION	25
5.6	RIGHT OF APPEAL	25
6.0	DEPARTMENT RIGHTS AND DISCLAIMERS	25
6.1	DEPARTMENT RIGHTS	25
6.2	DEPARTMENT DISCLAIMERS	27
7.0	DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY	27
7.1	POLICY	27
7.2	DBE PARTICIPATION GOAL.....	27
7.3	EQUAL EMPLOYMENT OPPORTUNITY	28
8.0	COMPLIANCE WITH APPLICABLE LAWS.....	28

APPENDICES

APPENDIX A - PROJECT DESCRIPTION, DESIGN-BUILDER RESPONSIBILITIES, AND
PROJECT STATUS

APPENDIX B - FORMAT AND ORGANIZATION OF STATEMENT OF QUALIFICATIONS

APPENDIX C - FORMS

1.0 INTRODUCTION AND GENERAL INFORMATION

This Request for Qualifications (RFQ) seeks Statements of Qualifications (SOQs) from Proposers to design, construct, and perform other identified activities for the I-15 CORE Project.

SOQs will be accepted only from Proposers that have assembled a team capable of providing all services and improvements necessary to complete the Project. Responses from individual engineering, construction, or consultant firms not prepared to provide all required services and improvements will not be accepted.

1.1 ABBREVIATIONS AND DEFINITIONS

The following abbreviations and capitalized terms used in this RFQ shall have the meanings indicated below.

1.1.1 Abbreviations

AA	Affirmative Action
ASQ	American Society for Quality
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EA	Environmental Assessment
EEO	Equal Employment Opportunity
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration, U.S. Department of Transportation
GRAMA	Government Records Access and Management Act
ISO	International Organization for Standardization
ITP	Instructions to Proposers
JV	Joint Venture
LLC	Limited Liability Company
MOT	Maintenance of Traffic
N/A	Not Applicable
NTP	Notice to Proceed for the Project
PI	Public Information
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposals
RFQ	Request for Qualifications
ROD	Record of Decision (state and federal)

ROW	Right(s)-of-Way
SOQ	Statement of Qualifications
UDOT	Utah Department of Transportation

1.1.2 Definitions

“Affiliate” means

- A. any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Principal Participant; or
- B. any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by
 - 1. the Proposer;
 - 2. any Principal Participant; or
 - 3. any Affiliate under part (A) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

“Construction Subcontractor” means a subcontractor on the Proposer’s team that will be responsible for construction of the Project.

“Contract” means the written agreement between the Department and the Design-Builder setting forth the obligations of the parties with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment. The Contract will include the Contract Documents and any amendments, supplemental agreements, and Change Orders required to complete the design and construction of the Work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

“Contract Amount” means the full compensation for the Work and all other obligations to be performed by the Design-Builder under the Contract Documents.

“Contract Documents” means the Contract, General Provisions, Quality Program, Design Requirements and Performance Specifications, all third-party Agreements, Engineering Data, Contract Drawings, the Department’s Standard Specifications and Standard Drawings, the selected Design-Builder’s Proposal, any Addenda, and all provisions required by law to be inserted in the Contract, whether actually inserted or not. Whenever separate publications or the Department’s Standard Specifications are referenced in the Contract Documents, it is understood to mean the publication and/or Specifications, as amended, which are current to the date Proposals are due, unless otherwise noted.

“Department” means the Utah Department of Transportation.

“Design-Build” means a project delivery methodology by which the Department contracts with a single firm that has responsibility for the design and construction of a project under a single contract with the Department.

“Design-Builder” means the Person selected pursuant to the RFP that enters into the Contract with the Department to design and construct the Project.

“Designer” means the Principal Participant or in-house designer that has primary responsibility for design services for the Project.

“Disadvantaged Business Enterprise (DBE)” means a for-profit small business concern as defined in 49 CFR Part 26.

“Final Acceptance” means written confirmation by the Department that the Project has been completed in accordance with the Contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.

“Independent Assurance” means activities that represent an unbiased and independent evaluation of all the sampling and testing procedures and equipment calibration used in the Department’s acceptance program. The Independent Assurance for the Project will be performed by the Department or the Department’s representative.

“Informational Documents” means the documents provided with and so designated in the RFP. The Informational Documents, including Plans contained therein and/or so designated, are not Contract Documents and are provided to the Design-Builder for informational purposes.

“Lead Principal Participant” means the Principal Participant who is designated by the Proposer as having the lead responsibility for managing the Proposer’s organization.

“Major Contractor” means a Principal Participant, Designer, subconsultant, or subcontractor responsible for performing more than 15 percent of the design, or subcontractor responsible for performing more than 20 percent of the construction, of the Project.

“Oversight” means all actions by the Department necessary to provide confidence that all material is incorporated in the Work, the Work complies with the Contract, and all equipment and all elements of the Work will perform satisfactorily for the purpose intended. Actions may include, but are not limited to, spot audits, verification tests, and sampling checks and reviews of Design-Builder’s Quality Program and related outputs.

“Person” means any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club, or other organization or legal entity.

“Principal Participant” means any of the following entities:

- A. The Proposer;
- B. If the Proposer is a joint venture, partnership, limited liability company, or other form of association, any joint venturer, partner, or member; and/or
- C. Any Person holding (directly or indirectly) a 15 percent or greater interest in the Proposer

“Project” means the improvements to be designed and constructed by the Design-Builder and all other Work products to be provided by the Design-Builder in accordance with the Contract Documents.

“Proposal” means the proposal submitted by the Proposer in response to the RFP, including any revisions thereto.

“Proposer” means a Person submitting a Statement of Qualifications for the Project in response to this RFQ.

“Quality Assurance (QA)” means all planned and systematic actions by the Design-Builder necessary to provide confidence and to certify to the Department that all Work complies with the requirements of the Contract Documents and that all materials incorporated in the Work, all

equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended. Such actions include acceptance checks, reviews, inspections and tests.

“QA Manager” means the individual responsible for the QA of the Work.

“Quality Control (QC)” means the total of all activities performed by the Design-Builder, Designer, subcontractors, subconsultants, producers, or manufacturers to ensure that all Work meets Contract requirements. QC includes design reviews and checks, inspection of material handling and construction, calibration and maintenance of sampling and testing equipment, working plan review, document control, production process control, and any inspection, sampling, and testing done for these purposes. Quality Control also includes documentation of QC efforts.

“QC Manager” means the individual employed by the Design-Builder who is responsible for the overall QC of the Work.

“Quality Program” means the overall QC, QA, and associated activities performed by the Design-Builder and their interrelationships to ensure that all Work complies with the Contract.

“Request for Proposals (RFP)” means a written solicitation issued by the Department to the Short-Listed Proposers seeking Proposals to undertake the Project to be used to identify the Proposer offering the best value to the State. The RFP includes the Instructions to Proposers (ITP), Contract Documents, and Informational Documents. The RFP is issued only to Persons who are on the Short-List.

“Request for Qualifications (RFQ)” means the written solicitation issued by the Department seeking SOQs to be used to identify the Short-List of the most highly qualified Proposers to receive the RFP for the Project.

“Short-List” means the list of those Proposers that have submitted SOQs that the Department determines, through evaluation of the SOQ, are the most highly qualified Persons and will be invited to submit Proposals in response to an RFP.

“Specialty Subcontractor” means those consultants or subcontractors identified by the Proposer/Design-Builder to perform Work critical to the success of the Project such as the Designer, quality firm, or subcontractor for bridges, retaining structures, pavement, or other specialty Work, if used.

“Statement of Qualifications (SOQ)” means the information prepared and submitted by a Proposer in response to this RFQ.

“Verification” means Contract compliance audits and sampling and testing performed to validate the quality of the Work. The Department, or a firm retained by the Department, will perform such Verification.

“Work” means all duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including but not limited to, the administrative, design, engineering, quality control, quality assurance, relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, labor, Materials, equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance of the Project, except for those efforts which the Contract Documents specify will be performed by the Department or other Persons. In certain cases the term is also used to mean the products of the Work.

1.2 PROJECT GOALS

The Department’s goals and objectives for the Project are as follows:

- Deliver I-15 CORE within the budget
- Provide the highest value for the budget
- Minimize inconvenience to the public
- Complete I-15 CORE by 2014
- Uphold the public trust

1.3 ROLE OF THE DEPARTMENT

In the context of the Project, the Department's responsibilities include, but are not limited to, the following:

- A. Overall program administration
- B. Preparation of the RFP, evaluation of Proposals, determination of Short-List, and selection of Design-Builder
- C. Contract administration
- D. Acquisition of ROW and permanent easements identified in the RFP
- E. Utility, railroad, environmental and other agreements identified in the RFP
- F. Preliminary surveying
- G. Oversight of the Work
- H. Final Acceptance of the Work and payment for Work performed

At the Department's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this Section.

1.4 PROJECT DESCRIPTION, DESIGN-BUILDER RESPONSIBILITIES, AND PROJECT STATUS

See Appendix A.

1.5 PROJECT SCHEDULE

The anticipated time of Contract Award is December 2009 with completion by 2014.

See Section 2.2 for the procurement schedule.

1.6 CONTRACT TYPE

The Contract will be a fixed-price, lump sum, Design-Build Contract.

1.7 GOVERNING LAW

Federal and Utah State laws govern the RFQ, RFP, and the Contract.

1.8 QUALITY ASSURANCE/QUALITY CONTROL

The Design-Builder will be required to plan, implement, and maintain a Quality Program for the Work. This program shall be developed by the Design-Builder to meet ISO 9001 standards. The

ISO 9001 registration is not required. The Design-Builder's Quality Program must follow the requirements of 23 CFR Part 637 and the Contract Documents.

Quality Assurance shall be independent from Quality Control. No member of the QA organization may perform QC activities and vice versa.

The Department will establish and maintain an oversight organization to monitor and perform audits of the Design-Builder's Work, including management, design, construction, and maintenance activities; the Quality Control program, and the Quality Assurance program, in order to verify the quality of the Work.

1.9 INSURANCE, LICENSING, AND PERMITS

The Department will provide an Owner-Controlled Insurance Program (OCIP) for the Project. The Design-Builder shall be required to provide specified insurance not included in the Department's OCIP. Details of the OCIP will be provided to Proposers in the RFP.

Prior to Contract execution, all Persons participating in this procurement and/or the Contract must obtain all licenses and permits and take all necessary steps to conduct business in the State of Utah and perform the Work required under the Contract, including proposing and carrying out contracts consistent with the laws of the State of Utah.

1.10 RULES OF CONTACT

The following rules of contact shall apply during the period between issuance of the RFQ and issuance of the RFP.

The rules are designed to promote a fair, unbiased, legally defensible procurement process. The Department is the single source of information regarding the Contract procurement.

The specific rules are as follows:

- A. After submittal of SOQs, no Proposer or any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the SOQs, except that a Proposer may communicate with a Person that is on both its team and another Proposer's team, so long as those Proposers establish a protocol to ensure that such Person will not act as a conduit of information between the teams.
- B. Contact between the Proposers and the Department (questions and responses to questions) shall only be through the Department's and Proposers' designated representative(s), as identified in Section 1.11.
- C. The Proposers shall not contact state officials or Department employees, including department heads, members of the evaluation committee(s), and any official who will evaluate SOQs, regarding the I-15 CORE, except for contacts through the process identified above.
- D. Any contact determined to be improper, at the sole discretion of the Department, may result in disqualification.
- E. All official communication regarding the I-15 CORE will be disseminated from the Department office on Department letterhead or via e-mail from the Department-designated representative(s), as identified in Section 1.11.

- F. The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.

1.11 PROPOSER QUESTIONS

The Department will consider questions submitted in writing by Proposers regarding the RFQ, including requests for clarification and requests to correct errors. All such requests must be submitted in writing or by e-mail in the format shown on Form RFQ-C (Appendix C) to the following address:

Utah Department of Transportation
I-15 CORE Project Office
ATTN: Mr. Dal Hawks
3098 Executive Parkway, Suite 375
Lehi, UT 84043
E-mail: i15corerfqquestions@utah.gov

No oral requests will be considered. No requests for additional information or clarification to any other Department office, consultant, employee or the FHWA will be considered.

Only requests received by 2:00 p.m. (MDT) on the date specified in Section 2.2 will be addressed. Questions will not be accepted by phone.

Questions must be titled "Proposer RFQ Question(s)" on the Subject heading line. All questions submitted by a Proposer shall be from a single individual, who shall identify the Proposer they represent and shall be the single point of contact as required by Section 4.4.1 herein.

A response to questions will be issued without attribution and sent to all recipients of this RFQ not later than seven days prior to the SOQ due date specified in Section 2.2.

1.12 RFQ ADDENDA

If necessary, the Department will issue Addenda to modify conditions or requirements of this RFQ to recipients of this RFQ.

1.13 NOTIFICATION OF FIRMS ON THE SHORT-LIST

Each Proposer will be notified in writing whether or not it has been selected for the Short-List. Notifications may be expected not later than the date specified in Section 2.2.

1.14 COSTS

Proposers are solely responsible for all costs and expenses of any nature associated with responding to this RFQ, including attending briefing(s) and providing supplemental information.

1.15 ORGANIZATIONAL CONFLICTS; INELIGIBLE FIRMS

- A. The provisions of 23 CFR Part 636.116 applies to this procurement. Proposers must include a full disclosure of all potential organizational conflicts of interest in their SOQ.

The Proposer's attention is directed to 23 CFR Section 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

"Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

- B. The Proposer is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement of the Contract with any Person with an organizational conflict of interest. The provisions of 23 CFR Part 636.116 apply to this procurement. Proposers must include a full disclosure of all potential organizational conflicts of interest in their SOQ.
- C. Each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the affected Proposers:
 - 1. Participation by any of the following Persons on more than one Proposer's team: Principal Participant, Designer, or Major Contractor; or
 - 2. Participation by an Affiliate of any such Person identified in clause (1) above, on another Proposer's team.

All Proposers affected by the conflict of interest will be disqualified, even if a Proposer is unaware of the conflict of interest, or if the Person or Affiliate causing the conflict is intended to have a different or lesser role than that described above.

- D. No firm that is ineligible for state contracts may participate on any Proposer team.
- E. By submitting its SOQ, each Proposer agrees that if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its sole discretion, disqualify the Proposer from the procurement process. In such case, the Proposer shall lose any claim or right to the Proposal Stipend identified in Section 1.17 herein or any other compensation from the Department. If the Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the Department, the Department may terminate the Contract for default.
- F. The following firms are members of the Department program management team that have assisted with this procurement and therefore may not participate on any Proposer team: HNTB Corporation, Horrocks Engineers, Inc.; Golder Associates, Inc.; The Intrepid Group, K Cartwright Associates, Inc. (KCA); Nossaman, LLP; Penna Powers Brian Haynes (PPBH), Charlotte Robinson, Stanton Constructability Services, Inc.; Westby Consulting LLC, Stein Consulting LLC, and RB&G Engineering, Inc.

1.16 ORGANIZATIONAL AND CONFIDENTIALITY REQUIREMENTS

- A. **Completion Capability:** Only prospective Proposers capable of completing this Project in its entirety will be eligible for the Short-List.
- B. **Minimum Requirements:** The Proposer must meet all legal, financial, and SOQ responsiveness and pass/fail requirements in Section 3.3.1.
- C. **Non-Disclosure Requirement:** The Proposer may be given access to records, which are confidential under State laws, solely for the purpose of performing the required services under the Contract. The Proposer shall be required to sign a non-disclosure statement prior to its receipt of such documents obligating each employee, agent, or subcontractor of the Proposer not to make inappropriate use of or improperly disclose any of the contents of such documents.
- D. **Non-Public Process:** The Department will maintain a non-public process for the duration of this Design-Build procurement. Pursuant to Section 63G, Chapter 02 of the Government Records Access and Management Act (GRAMA), all records related to this procurement, including, but not limited to, SOQs, Evaluation and Short-List Procedures, Proposals, Evaluation and Selection Procedures, and any records created during the evaluation and selection process, will remain protected records until the Contract has been executed by all necessary officials of the Design-Builder and the State, except for the Department's right to publically disclose certain information about the SOQs, such as the name and member of each team.
- E. **Organizational and Personnel Changes:** Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after they have been placed on the Short-List, their organization, including all Principal Participants, Specialty Subcontractors, and key management personnel identified in the SOQ, must remain intact for the duration of the procurement process. A Proposer may propose substitutions for participants after the SOQ submittal; however, such changes will require prior written approval by the Department, which approval may be granted or withheld in the Department's sole discretion. The Proposer should carefully consider the make-up of its team prior to submittal of the SOQ to reduce the likelihood of any such changes during the Proposal period and thereafter throughout the term of the Contract.
- F. **Public Information:** All records pertaining to this procurement will become public information after execution of the Contract, unless such records are determined to be protected under GRAMA. Any records marked as protected by a Proposer in its SOQ or, if Short-Listed, in its Proposal will be returned to the unsuccessful Proposers after the Contract with the Design-Builder has been executed and delivered.

1.17 PROPOSAL STIPEND

The Department will provide a stipend in the amount of \$1.5 million for each Short-Listed Proposer not chosen as the successful Proposer that submits a responsive Proposal.

2.0 PROCUREMENT PROCESS

2.1 OVERALL PROCUREMENT PROCESS

The process for procurement of the Contract will be in accordance with laws and rules of the State of Utah, using a “best value” basis of selection. The intent of the Department is to award the Contract to the Proposer that provides the Proposal with the best transportation solution (best design) for a fixed price.

The procurement process will include two steps:

- A. RFQ (determination of Short-List)
- B. RFP (selection of Design-Builder from the Proposers on the Short-List that submitted responsive Proposals)

In determining the Short-List, the Department will consider information submitted in the SOQs and information that is otherwise available to the Department.

2.1.1 RFQ

SOQs submitted in response to this RFQ must include a response to each pass/fail and technical evaluation factor. The Short-List of Proposers that will be invited to submit Proposals will be determined based on evaluation of pass/fail and technical factors set forth herein. This RFQ sets out what is required during the RFQ step of the procurement (see Section 4.0 for SOQ Submittal Requirements).

At the end of the SOQ evaluations, the Department will determine the Short-List. Proposers on the Short-List will then be invited to provide Proposals.

2.1.2 RFP

The RFP will provide further specific instructions on what to submit, the evaluation factors, the objectives and requirements for evaluation, and the evaluation rating guidelines for the RFP step of the procurement.

Factors for the RFP may include the following:

- A. Pass/Fail
 - 1. Legal
 - 2. Quality Program
 - 3. Certain Technical Solutions
 - 4. Financial
 - 5. Responsiveness of Proposal
- B. Evaluation Criteria
 - 1. Project Definition
 - 2. Maintenance of Traffic
 - 3. Schedule
- C. Price allocation of fixed price

Information to be submitted in the Proposals is anticipated to include, but not be limited to, the following:

1. Legal documents demonstrating ability to enter into a Contract with the Department
2. Proposal Bond
3. Specified certificates and representations
4. Letter of commitment from surety(ies) for Payment and Performance Bonds
5. Project schedule milestones
6. Technical approach including concept plans for the new construction and traffic management
7. Specified design documents and conceptual diagrams and sketches
8. Price allocation form

The successful Proposer for the Project will fully understand the Project goals and the Design-Build procurement process to deliver a Proposal that provides to UDOT and the citizens of Utah outstanding transportation solutions within the available budget. The procurement process will use a multi-phased discussion process to develop innovative solutions that may include the Proposers defining the Project's scope, approach to managing traffic, approach to quality and schedule.

2.2 PROCUREMENT SCHEDULE

The following represents the current schedule for the Project. The schedule is subject to change at the discretion of the Department.

Activity	Due Date
Pre-SOQ Informational Meeting	April 16, 2009
Issue RFQ	April 16, 2009
Final Date for receipt of Proposer's questions	April 30, 2009
Issue Date for Final Addendum and/or answers to Proposer's questions	May 7, 2009
SOQs Due	May 14, 2009
Short-List announced	May 28, 2009
Issue Draft RFP	June 1, 2009
Issue RFP	August 18, 2009
Technical Proposals and Price Allocations Due	November 19, 2009
Selection/Award	December 2009
Contract Execution	December 2009
Notice to Proceed	January 2010

3.0 EVALUATION PROCESS FOR THE SOQ

3.1 EVALUATION OBJECTIVES

The objective of the RFQ step of the procurement is to create a Short-List of the most highly qualified Proposers with the general (technical, financial, and management) capability, capacity, and experience necessary to successfully undertake and complete the Work. The Design-Builder will have primary responsibility to plan, design, manage, and control the Project and to complete the Project on or ahead of schedule. Specific objectives relating to each of the pass/fail and the technical evaluation factors listed in Section 3.3 are included in Sections 4.4.2.1 through 4.4.2.5 of this RFQ.

3.2 REVIEW AND EVALUATION OF THE SOQ

The information submitted in accordance with Section 4.0 will be evaluated in accordance with both the pass/fail factors listed in Section 3.3.1 and the technical factors provided in Section 3.3.2.

3.3 EVALUATION FACTORS FOR THE RFQ/SOQ

This Section 3.3 outlines the evaluation factors for the RFQ phase of the procurement. This information is intended to assist Proposers in organizing their teams and preparing their SOQs.

3.3.1 Pass/Fail Evaluation Factors

The pass/fail evaluation factors are as follows:

- A. **Legal:** The Proposer has presented evidence showing its organization has the legal ability to enter into and perform the Contract, to design and build the Project, and comply with state licensing requirements.
- B. **Financial:** The Proposer has demonstrated the ability to provide the required bonds and meet other financial requirements of undertaking and completing the Work.
- C. **Proposal Responsiveness:** The Proposer's SOQ does not deviate from the RFQ requirements in any material respect.

If a Proposer passes all of the pass/fail evaluation factors, its SOQ will be further evaluated using the technical evaluation factors in Section 3.3.2. If a Proposal fails any single pass/fail requirement, the SOQ may be rated as *Unacceptable*, which will result in the technical evaluation factors not being rated and the Proposer not being included on the Short-List. The Department may allow certain deficiencies in the SOQs relating to the above factors to be corrected through clarifications, as described below, but shall have no obligation to do so.

3.3.2 Technical Evaluation Factors

The technical evaluation factors are as follows:

- A. **Organization and Key Managers (40 Points):** The proposed organization for the Project with emphasis on lead design firm(s) and Specialty Subcontractors for quality, environmental compliance, and key management positions.

- B. **Experience of the Firms (40 Points):** Demonstrated experience relevant to the size, complexity, and composition of the anticipated Project and the experience of the Principal Participants, Designer, and other subcontractors and consultants, including Specialty Subcontractors, with emphasis on Design-Build; environmental and quality compliance; highway and highway structures; reconstruction using innovative designs; complex structures; methods and materials; and construction in environmentally sensitive areas.
- C. **Past Performance (20 Points):** Demonstrated record of performance over the past five years, including (i) claims history (to include litigation, disputes arbitrated, performance claims brought against the surety, termination for cause, suspension for cause, defaults, and claims brought under the False Claims Act); (ii) disciplinary action; (iii) safety record; (iv) client references; and (v) awards, citations, and commendations.

The ratings assigned to the technical evaluation factors will be compiled to determine an overall quality rating for the SOQ. Ratings for each technical evaluation factor and the overall rating for the SOQ will be based on the following:

EXCEPTIONAL (90-100 points) – The Proposer has provided information relative to its qualifications that is considered to significantly exceed stated objectives/requirements in a beneficial way and indicates a consistently outstanding level of quality. There are essentially no weaknesses.

GOOD (75-89 points) – The Proposer has presented information relative to its qualifications that is considered to exceed stated objectives/requirements and offers a generally better-than-acceptable level of quality. Weaknesses, if any, are very minor.

ACCEPTABLE (60-74 points) – The Proposer has presented information relative to its qualifications that is considered to meet the stated objectives/requirements, and has an acceptable level of quality. Weaknesses are minor and can be corrected.

UNACCEPTABLE (below 60 points) – The Proposer has presented information relative to its qualifications that contains significant weaknesses and/or deficiencies and/or an unacceptable level of quality. The SOQ fails to meet the stated objectives and/or requirements, and/or lacks essential information, and is conflicting and/or unproductive. Weaknesses/deficiencies are so major and/or extensive that a major revision to the SOQ would be necessary and/or they are not correctable.

3.4 REQUESTS FOR CLARIFICATION

The Proposer shall provide accurate and complete information to the Department. If information is not complete, the Department will either declare the SOQ non-responsive, which will bar the Proposer from being Short-Listed, or notify the Proposer, who may be allowed to participate further in the procurement if all information required is provided within the timeframe established by the Department; however, the Department's right to allow such further participation shall not give rise to any obligation on the Department. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the Department with notations of the insufficiencies or omissions and with a request for clarifications and/or submittal of corrected, supplemental, or missing documents. If a response is not provided, the SOQ may be declared non-responsive.

The Department may waive technical irregularities in the form of the SOQ of the Proposer that do not alter the quality or quantity of the information provided.

The Department may, at its sole discretion, request clarifications and/or supplemental information from Proposers during the SOQ evaluation and Short-List process.

All requests and responses shall be in writing and delivered via e-mail, certified mail, courier, or fax, and, if by fax, confirmed by priority mail/express delivery service. Responses shall be limited to answering the specific information requested by the Department.

Proposers' responses shall be submitted to the address in Section 4.2 within three days of receipt of the request from the Department except as otherwise specified in writing by the Department. Responses shall be submitted as specified in the Department's Request for Clarification.

3.5 DETERMINATION OF THE SHORT-LIST

The Department will Short-List at least two (if any) but not more than four most highly qualified Proposers. Failure to achieve at least two qualified proposers shall require re-solicitation.

3.6 CHALLENGE

The decision of the Department on the Short-List shall be final and shall not be appealable, reviewable, or reopened in any way, except as provided in Section 5.0. Parties participating in the RFQ phase of this procurement shall be deemed to have accepted this condition and all other requirements of this RFQ.

4.0 SOQ SUBMITTAL REQUIREMENTS

4.1 DATE AND TIME OF RECEIPT

All SOQs must be received no later than 2:00 p.m. (MDT) on the day specified in Section 2.2.

The SOQs must be enclosed in sealed containers. Late submittals will not be considered and will be returned unopened to the address indicated on the cover of the package.

4.2 SUBMITTAL ADDRESS

SOQs must be delivered to the following address:

Utah Department of Transportation
Attn: Mr. Dal Hawks
Salt Lake City Construction Division Desk
4501 South 2700 West
Fourth Floor
West Valley City, UT 84119

Each Proposer shall be responsible for obtaining a written receipt appropriate to the means of delivery from the Department office specified in this Section 4.2 at the time of delivery of its SOQ. It is the Proposer's sole responsibility to ensure delivery of its SOQ to the Department at the time and place specified herein, and the Department shall have no liability or responsibility therefore.

4.3 SOQ REQUIREMENTS

The requirements for the SOQs are described in Appendix B.

4.4 CONTENT OF SOQ

This section describes the specific information that must be included in the SOQ. Required forms for the SOQ are contained in Appendix C. Any material modification to the forms may result in the SOQ being declared non-responsive.

Proposers should provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in Section 4.4.2.

If the Proposer submits information in its SOQ that it believes to be protected records under GRAMA and that it wishes to protect from disclosure, the Proposer must do the following:

- A. Clearly and conspicuously mark all financial information, trade secrets, or other information customarily regarded as confidential business information as such in its SOQ at the time the SOQ is submitted and include a cover sheet identifying each section and page which has been so marked. The identification for such information should be marked "Confidential Business Information."
- B. Include a statement with its SOQ justifying the Proposer's determination that certain records are protected for each record so defined.
- C. Defend any action, at its sole expense, that seeks the release of the records the Proposer believes to be protected, and indemnify, defend, and hold harmless the Department and the State, their agents, and employees from any judgments awarded against the Department or the State in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the Department's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting an SOQ, the Proposer agrees that this indemnification survives as long as the protected records are in possession of the Department or the State.

Unless otherwise provided by law, confidential business information provided to the Department is not subject to inspection at any time by third persons under Utah Code Title 63G, Chapter 2 GRAMA.

4.4.1 Cover Letter

The Proposer shall provide a one-page letter indicating its desire to be considered for the Project and stating the official names and roles of all Principal Participants, the Designer, Major Contractors, subconsultants, and Specialty Subcontractors. The Proposer shall identify a single point of contact for the Proposer and the address, telephone numbers, and e-mail address where questions should be directed. Authorized representatives of the Proposer's organization shall sign the letter. If the Proposer is not yet a legal entity or is a joint venture or general partnership, authorized representatives of all Principal Participants shall sign the letter.

Proposer shall attach to the Cover Letter, the Acknowledgment of Receipt (Appendix C) acknowledging receipt of the RFQ and any Addenda and/or responses to questions issued by the Department.

4.4.2 Evaluation Objectives and Submittal Requirements

In providing an SOQ, Proposers should be guided by the Project Goals in Section 1.2, the values identified in Appendix A, and the objectives and submittal requirements listed in Sections 4.4.2.1 through 4.4.2.5. An objective is stated for each evaluation factor to provide Proposers with the expectations of the Department. The requirements for each evaluation factor and the information to be submitted are listed and described in detail. The SOQ evaluation ratings of Section 3.3 will be based on how well the SOQ responds to the requirements for each of the evaluation factors.

4.4.2.1 Legal

- A. Objective
 - 1. To confirm that the Proposer is or will be legally constituted and able to submit Proposals and enter into the Contract and complete the Work, and that the members of Proposer's team either have, or commit to obtain, all required licenses.
- B. The requirements and information to be provided in Section 1 of the SOQ are as follows:
 - 1. Form L-1, Proposer's Organization Information (Appendix C), for the Proposer's organization
 - 2. Form L-2, Principal Participant and Designer Certification (Appendix C), for each Principal Participant and the Designer covering the last five years
 - 3. A full disclosure of all potential organizational conflicts of interest (See Section 1.15)
- C. If the Proposer is a joint venture, limited liability company, or partnership, provide the following:
 - 1. Identity of the Lead Principal Participant of the entity, if any (Form L-1, Appendix C)
 - 2. Percent equity share held by each member (show in "Lead Participant?" column of Form L-1, Appendix C)
 - 3. An express statement signed by each of the equity members of the entity, setting forth its agreement to be jointly and severally liable for the Proposer's obligations under the Proposal and the Contract, in accordance with Section 1.9 (Insurance, Licensing, and Permits)
- D. The requirements and information to be provided in Appendix A to the SOQ are as follows:
 - 1. Submit notarized Power of Attorney for each Principal Participant authorizing the Principal Participant's representative to sign for that Principal Participant.
 - 2. Submit notarized Power of Attorney from each Principal Participant authorizing the Proposer's designated point of contact to sign documents for and on behalf of the Proposer's organization.
 - 3. If the Proposer has already been legally constituted, provide full details of the organizational structure and supporting organization/formation documents including a copy, as applicable, of the joint venture

agreement, limited liability company operating agreement, or partnership agreement.

4. If the Proposer has not yet been legally formed, provide a brief description of the proposed legal structure and draft copies of the underlying documents, including the following:
 - a. All significant terms of the joint venture, limited liability company, or partnership, including the rules relative to the administration of the joint venture, limited liability company, or partnership, including dealing with deadlock situations
 - b. Description of how the joint venture, limited liability company, or partnership will operate administratively and technically
 - c. A teaming agreement or comparable document setting forth the equity members' agreement to form the organization

4.4.2.2 Financial

- A. Objective
 1. To identify Proposers with demonstrated capability and stability to undertake the financial responsibilities associated with the Project including bonding.
- B. The requirements and information to be submitted in Section 2 of the SOQ related to Surety Letter(s) statements are as follows:
 1. Provide a letter from a surety(ies) or insurance company indicating that the Proposer is capable of obtaining a Proposal Bond and Performance and Payment Bonds covering the Design-Build Contract.
 - a) The bonding/security capacity levels in Table 4.4 represent minimum levels necessary to pass the pass/fail criteria of Section 3.3.1.

Table 4.4

Proposal Bond/ Security	Payment Bond/ Security	Performance Bond/ Security
5% of the Contract Amount	\$500 million	\$500 million

2. The surety or insurance company submitting such letter must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-X by A.M. Best and Company, be listed on Treasury Department Circular 570, and be on the list of companies approved by the State of Utah.
3. The letter must specifically state that the surety or insurance company has read the RFQ and has evaluated the team's backlog and work-in-progress in determining its bonding capacity. Letters indicating "unlimited" bonding/security capability are not acceptable.

- C. The Contract Amount is anticipated to be within the range of: \$1.25 to \$1.35 billion.

4.4.2.3 Organization and Key Managers

A. Objectives

1. To identify Proposers that will effectively manage all aspects of the Contract in a quality, timely, and effective manner and will integrate the different parts of its organization collectively and with the Department, in a cohesive and seamless manner.
2. To identify the best personnel for key management positions with demonstrated experience and expertise in and a record of producing quality work on projects of a similar nature to this Project. The key management positions for the purposes of this RFQ are the Project Sponsor, the Design-Builder's Project Manager, the Design Manager, the MOT Manager, Lead Scheduler, the Third-Party Manager, the Structures Design Manager, the Construction Manager, and the QA Manager.
3. To identify Proposers with sufficient manpower and equipment resources to successfully complete the design and construction of the Project.

B. The requirements and information to be submitted in Section 3 of the SOQ are as follows:

1. Provide the organization and communication structure among the Proposer and its Principal Participants, its Designer, the Quality Manager, and its Key Managers. This information may be submitted in an organization chart on an 11-inch by 17-inch sheet of paper.
2. Generally identify the manpower and equipment resources the team has available for the design and construction of the Project. Summary shall be a maximum of two pages.
3. Using Form E-3, Proposed Key Personnel Information (Appendix C), provide requested information on Key Managers. If more than one key position is filled by the same person, so indicate. Provide three references for the Project Manager nominee and two references for all other Key Managers. Indicate the name, position, company, or agency, and current phone and fax numbers for each reference. References shall be owners or clients for whom the Key Managers have performed project work in the past ten years and shall not be current or past employers of the Key Managers. Project Key Managers are preferred to have experience on projects of a similar size, type of work, and complexity as this Project and shall meet the following qualifications:
 - a. **Project Sponsor:** Shall be designated at the discretion of the Design-Builder and must have the authority to represent, make decisions for, and oversee the performance of the Design-Builder. It is preferred that the Project Sponsor has a minimum of 15 years experience in construction and management of construction on highway projects that include work of a similar scope, nature, and complexity as included in this Project, and has Design-Build experience.

- b. **Project Manager:** Shall have a minimum of 15 years experience in construction and management of design and construction on highway projects that included work of a similar scope, nature, and complexity as included in this Project, including Design-Build projects.
- c. **Construction Manager:** Shall have a minimum of ten years demonstrated experience in construction and management of construction on highway projects with similar size, type of work, and complexity as this Project. Emphasize Design-Build experience and extensive project management experience.
- d. **Design Manager:** Shall be a Utah-registered professional engineer, or can become registered at the time of NTP, who is an employee of the Designer and shall have a minimum of ten years demonstrated experience in managing design for multidisciplinary highway projects with similar scope and complexity as this Project. Experience with interstate highways, interstate bridges, bridge widening, and projects of similar size and type should be emphasized.
- e. **MOT Manager:** Shall be a Utah-registered professional engineer, or can become registered at the time of NTP shall have a minimum of eight years demonstrated experience in conceiving and implementing maintenance of traffic strategies during construction of multidisciplinary highway projects with similar scope and complexity as this Project. Emphasize Design-Build experience.
- f. **Third-Party Manager:** Shall have a minimum of eight years demonstrated experience. The Third-Party Manager shall have experience in coordination with third parties involved with the project, including utility, railroad, and local governments, and effectively communicating with design engineers and construction staff regarding requirements of the associated agreements. Emphasize Design-Build experience.
- g. **Structures Design Manager:** Shall be a Utah-registered professional engineer, or can become registered at the time of NTP, and have demonstrated at least ten years experience in bridge design, including steel and concrete superstructures, continuous multispans bridges, and curved bridges.
- h. **QA Manager:** Shall have a minimum of eight years demonstrated experience in highway design and construction with at least five years experience in quality assurance/control activities, including preparation and implementation of quality plans and procedures for design and construction. The QA Manager shall be an ASQ certified Manager of Quality or can become certified by the time of the NTP. The QA Manager can hold only this Key Manager position.
- i. **Lead Scheduler:** Shall be proficient with Primavera scheduling, experienced using P6 software, and have a minimum of eight

years experience in scheduling Design-Build projects and large transportation projects (projects in excess of \$100 million) with similar scope and complexity as this Project.

4. Submit resumes outlining Key Manager experience and qualifications. Resumes shall be a maximum of two pages each. Resumes should highlight the following information:
 - a. Proposed role on the Project and experience in the area of responsibility
 - b. History of employment with firm
 - c. Experience in the management, design, and/or construction of projects, especially any Design-Build projects
 - d. Project role, if any, in projects included in firm experience
 - e. Percent time allocated/committed to the Project

4.4.2.4 Experience of the Firms

A. Objectives

1. To identify the best design and construction firms with demonstrated experience, expertise, capacity in, and record of producing quality Work on projects similar in nature to the Project.
2. To identify Proposers that have the following:
 - a. The experience in successfully managing, designing, and constructing projects of the size and complexity of this Project
 - b. Superior records of completing contracts on time and within budget
 - c. Experience in successfully constructing major highways in sensitive environmental areas and community areas while managing the maintenance of traffic; roadway design and construction; bridge design and construction; environmental permitting; and public involvement aspects of projects of the size and complexity of this Project
 - d. Superior safety records
 - e. Technical and management experience and expertise to plan, organize, execute the design and construction of, and assure the quality and safety of the Project
3. To identify Proposers that will effectively manage all aspects of the Contract in a quality, timely, and effective manner and will integrate the different parts of its organization with the Department in a cohesive and seamless manner.
4. To identify Proposers that have the technical and management experience and expertise to plan, organize, execute the design and construction of, and assure the quality and safety of the Project.

- B. The requirements and information to be submitted in Section 4 of the SOQ are as follows:
1. Provide a separate summary of the background and experience of each Principal Participant and the Designer. Summaries shall be a maximum of two pages for each firm; the format is at the discretion of the Proposer.
 2. Using Form E-1, Project Description (Appendix C), show the firm's experience by providing no less than two past project descriptions for each Principal Participant and the Designer and Major Contractors. Highlight experience in the past ten years relevant to the Project. Describe those projects having a scope comparable to that anticipated for the Project. Attach the Forms E-1 to the respective firm's background and experience summary.
 3. Using Form E-2, Subcontractor Information (Appendix C), except for the designated Designer (which is included on Forms L-1 and E-3), identify subcontractors (including all Major Contractors, Specialty Subcontractors, and consultants) that the Proposer plans to use (to the extent they are known), indicating what portion of the Work each subcontractor is anticipated to undertake. Submit maximum one-page summaries of experience for each listed subcontractor.

4.4.2.5 Past Performance

- A. Objectives
1. To select Proposers whose team members and personnel do not have a history of legal and financial problems that could adversely impact the Project.
 2. To obtain the commitment of the Proposer, Principal Participants, Designer, and Major Contractors regarding representations made in the SOQ.
- B. Requirements and information to be submitted in Section 5 of the SOQ:
1. Using Form PP-1, Past Performance (Appendix C), provide the information requested in the bulleted subparagraphs (a–h) below for each Principal Participant, Designer, Major Contractor, and Specialty Subcontractor as defined in section 1.1.2. If a Proposer has no record of relevant past performance or if the information relative to a category is not available, enter a declarative statement to that effect on Form PP-1. If the record of relevant past performance does not exist and/or is not available, the Proposer shall receive a rating of *Acceptable* for this factor. Attach additional sheets to Form PP-1 as necessary. For each instance or combination of litigation (whether a judgment was rendered or not), claims against a performance bond, a proceeding subject to arbitration where a judgment was rendered, assessment of liquidated damages, notice of default or suspension (other than suspension for convenience of the owner), termination for cause, or disciplinary action, provide the owner's name and the name of its current representative (and current phone and fax number and/or e-mail address) who can be contacted for additional information. With respect to the information solicited in this Section 4.4.2.5, such information shall be provided for the past five years

from date of issuance of the RFQ. Failure to provide this information, conditional or qualified submissions to requirements, requests or questions posed (i.e., “to our knowledge,” “to the extent of available information,” “such information is not readily available,” “such information is not maintained in the manner requested,” etc.), incomplete or inaccurate submissions, or nonresponsive submissions will lower the evaluation rating for this quality factor or result in a deficiency sufficient to cause the Department to declare the SOQ nonresponsive.

- a. **Arbitration Proceedings:** For any Principal Participant, identify any arbitration claim against an owner for which a judgment was rendered.
- b. **Awards, Citations, and/or Commendations:** List awards, citations, and/or commendations for performance relevant to this Project received by any Principal Participant, Designer, Major Contractor, and/or Specialty Subcontractor within the past five years. Describe the work for which the awards, citations, and/or commendations were received.
- c. **Disciplinary Action:** Indicate any disciplinary action taken against any Principal Participant, Designer, or Major Contractor by any governmental agency or licensing board, including both the suspension from the right to propose or bid and the removal from any Proposer/bid list.
- d. **Liquidated Damages:** For any Principal Participant or Major Contractor, provide a list of all projects where Liquidated Damages were assessed by the owner. Include the number of days of delay, the total amounts due, and the cause of the delays as determined by the owner.
- e. **Litigation:** For any Principal Participant, provide a list of all litigation (including all complaints or responses to complaints filed) involving its performance or participation on a project in excess of \$1 million. Include the nature of the litigation, the amount asserted, the parties involved, and the resolution (including current status for unresolved litigation).
- f. **Successful Claims against the Surety:** For any Principal Participant or Major Contractor, provide a list of all projects where the owner asserted a successful claim against a bid, performance, or warranty bond. A successful claim is considered one in which the bonding company performed any obligation of the Principal Participant’s, regardless of the position taken by the bonding company or ultimate finding made by the judicial authority. Provide the value of the amount assessed or work performed, the type and nature of the claim, the parties involved, and the resolution of the claim (including current status for unresolved claims).
- g. **Suspension or Notice of Default:** For any Principal Participant, Designer, or Major Contractor, identify any Suspension that was not for the convenience of the owner, or default notice provided for

h. **Termination for Cause:** Describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Designer, or Major Contractor that has been terminated for cause, or for which a notice of default was delivered, or which required completion by another party. Describe the reasons for termination or notice.

- ## 5.0 PROTESTS

5.1 WRITTEN PROTESTS ONLY

Innovative Contracting Engineer
4501 South 2700 West, 4th Floor, Box 148460
Salt Lake City, UT 84414-8460

The Protest Official may, in his/her discretion, discuss the protest with the protestor prior to issuance of the Protest Official's written decision. The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but it shall be decided, on the basis of the written submissions, by the Protest Official or his/her designee,

whose decision shall be final and conclusive. The Protest Official or his/her designee shall issue a written decision regarding any protest to each Proposer.

5.2 PROTEST CONTENTS

- A. All Protests must include the following:
 - 1. The name and address of the Proposer
 - 2. The Project name and Contract number
 - 3. A detailed statement of the nature of the protest and the grounds on which the protest is made
 - 4. All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury.
- B. The protestor must demonstrate or establish a clear violation of a specific law or regulation.
- C. The Protest Official will not be obligated to postpone the SOQ due date or Short-List announcement in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation.
- D. If the protest is denied, the protestor shall be liable for the Department's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs.

5.3 PROTEST PRIOR TO SOQ DUE DATE

- A. Prior to the SOQ due date, all protests, including protests based on alleged restrictive specifications or alleged improprieties in any type of solicitation, shall be filed with the Protest Official not less than seven days prior to the SOQ due date.
- B. The Protest Official will promptly make a determination in writing regarding the validity of the protest and whether or not the RFQ process should be delayed beyond the scheduled SOQ due date.
- C. If the Protest Official determines that the scheduled SOQ due date should be delayed, all Proposers will be notified by written addendum of the delay and the reason thereof.
- D. If the protest is determined to be valid, the Protest Official will respond in writing to each material issue raised in the protest in a timely manner prior to the Department proceeding further with the RFQ.
- E. The failure of a Proposer to file a basis for a protest regarding this RFQ shall preclude consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

5.4 PROTEST PRIOR TO ANNOUNCING THE SHORT-LIST

When a protest or appeal has been filed in a timely manner with the Protest Official prior to announcing the Short-List, the Department will not announce the Short-List until after the resolution of the protest or appeal.

5.5 PROTEST REGARDING SHORT-LIST DECISION

- A. If the Short-List decision is being protested, a protestor shall protest in writing to the Protest Official as soon as practical, but not later than seven days after the protestor knew or should have known it was not included on the Short-List. If the protest has been filed in a timely manner, the Protest Official will promptly make a determination in writing regarding the validity of the protest and whether or not the procurement should be delayed, or the Short-List considered for revision.
- B. If the procurement is delayed, all Proposers will be notified of the delay. The Protest Official will respond in writing to each material issue raised in the protest in a timely manner prior to proceeding further with the procurement.
- C. The Department will not proceed with the procurement for seven days after the decision is rendered by the Protest Official unless the protestor waives in writing its right to appeal the Protest Official's decision.
- D. Should a protestor wish to appeal the decision of the Protest Official concerning any Short-List decision, a protestor shall follow the procedures as outlined in Section 5.6.

5.6 RIGHT OF APPEAL

- A. In the event that a protestor receives an unfavorable decision from the Protest Official to its protest, the protestor shall have the right to appeal the decision of the Protest Official by submitting a written appeal to the UDOT Deputy Director or designee within seven days after receipt of the decision of the Protest Official. The UDOT Deputy Director, or designee, will appoint a Protest Committee of at least three members to review the protest and the decision of the Protest Official.
- B. The Protest Committee will notify the protester in writing in a prompt manner of its decision regarding the protest and the appeal. If the protest and appeal were filed prior to the release of the Short-List, the Department will not announce the Short-List for seven days after the decision of the Protest Committee.
- C. If the matter is not resolved after the appeal, the protestor may continue the protest only by appeal to judicial authority.

6.0 DEPARTMENT RIGHTS AND DISCLAIMERS

6.1 DEPARTMENT RIGHTS

The Department may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFQ. The Department reserves the right, in its sole and absolute discretion, to do the following:

- A. Reject any or all SOQs.
- B. Issue a new RFQ.
- C. Cancel, modify, or withdraw the RFQ.
- D. Issue Addenda, supplements and modifications to this RFQ.
- E. Modify the RFQ process (with appropriate notice to Proposers).
- F. Appoint a Selection Committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluation.
- G. Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in SOQs.
- H. Revise and modify, at any time before the SOQ due date, the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Department will circulate an Addendum to all registered Proposers setting forth the changes to the evaluation criteria or methodology. The Department may extend the SOQ due date if such changes are deemed by the Department, in its sole discretion, to be material and substantive.
- I. Hold meetings and exchange correspondence with the Proposers responding to this SOQ to seek an improved understanding and evaluation of the SOQs. If individual Proposer informational meetings are held, all Proposers submitting a responsive SOQ shall be given an opportunity to participate in such meetings.
- J. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the SOQs.
- K. Waive weaknesses, informalities, and minor irregularities in SOQs.
- L. Disqualify any team that changes its SOQ without Department written approval.
- M. Refuse to receive or open an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based on, but not limited to, the following:
 - 1. Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Department (or State)
 - 2. Default on the part of a Principal Participant or Designer under previous contracts with the Department (or State)
 - 3. Unsatisfactory performance by the Proposer, a Principal Participant, and/or Designer under previous contracts with the Department (or State)
 - 4. Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant, and/or Designer
 - 5. Submittal by the Proposer of more than one SOQ for the same Work under the Proposer's own name or under a different name
 - 6. Existence of an organizational conflict of interest under Section 1.15, or evidence of collusion in the preparation of an SOQ, proposal, or bid for any Department design or construction project by (a) the Proposer,

Principal Participant, or Designer, and (b) other proposers or bidders for that project

7. Uncompleted work or default on a contract in another jurisdiction for which the Proposer or a Principal Participant is responsible

The RFQ does not commit the Department to enter into a Contract, nor does it obligate the Department to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent on sufficient appropriations and authorizations being made by the Legislature of Utah, or the Congress of the United States if federal funds are involved, for performance of a Contract between the successful Proposer and the Department.

In no event shall the Department be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Department, has been executed and authorized by the Department and approved by all required parties, and then only to the extent set forth therein.

6.2 DEPARTMENT DISCLAIMERS

In issuing this RFQ and undertaking the procurement process contemplated hereby, the Department specifically disclaims the following:

- A. Any obligation to award or execute a Contract pursuant to this RFQ or the RFP; and
- B. Subject to Section 1.17, any obligation to reimburse a Proposer for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Proposer is specifically acknowledging these disclaimers.

7.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY

7.1 POLICY

The Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)–assisted contract or in the administration of 49 CFR Part 26. The Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

7.2 DBE PARTICIPATION GOAL

A DBE Goal of between 1.5 percent and 3 percent has been estimated for the Project.

7.3 EQUAL EMPLOYMENT OPPORTUNITY

In connection with this RFQ and the Contract, Proposers shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being physically challenged. Proposers shall take affirmative action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being physically challenged. Such action shall include, but not be limited to, the following: layoff or termination; rates of pay or other forms of compensation; employment; job assignment; upgrading; demotion; transfer recruitment/recruitment advertising; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. Equal Opportunity Training Hours have been set at 15,000 hours.

8.0 COMPLIANCE WITH APPLICABLE LAWS

Proposers shall comply with all laws, in all aspects, that are applicable to the procurement process of this Project and the performance of the Contract. The State of Utah recently enacted the following legislation, which may apply to this Project:

- A. House Bill 331; and
- B. Senate Bill 81.

This list is not intended to be comprehensive. It is the Proposers' responsibility to be aware of current laws.